

In the Office Action dated February 1, 2002, claims 1-13 were rejected under 35 U.S.C. §103(a) as being unpatentable over Harrison, U.S. Patent No. 2,626,456, in view of Win, U.S. Patent No. 4,907,515 and Warrick, U.S. Patent No. 3,942,654. Applicants respectfully traverse the rejection for the reasons discussed below.

The test for obviousness under 35 U.S.C. §103 is whether the claimed invention would have been obvious to those skilled in the art in light of the knowledge made available by the reference or references. *In re Donovan*, 184 USPQ 414, 420, n. 3 (CCPA 1975). It requires consideration of the entirety of the disclosures of the references. *In re Rinehart*, 189 USPQ 143, 146 (CCPA 1976). All limitations of the claims must be considered. *In re Boe*, 184 USPQ 38, 40 (CCPA 1974). In making a determination as to obviousness, the references must be read without benefit of Applicants' teachings. *In re Meng*, 181 USPQ 94, 97 (CCPA 1974). In addition, the propriety of a §103 rejection is to be determined by whether the reference teachings appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed substitution, combination, or other modifications. *In re Lintner*, 173 USPQ 560, 562 (CCPA 1972). A reference which teaches away from the Applicants' invention may not properly be used in framing a 35 U.S.C. §103 rejection of Applicants' claims. See *United States v. Adams*, 148 USPQ 479, 484 (1966).

It is clearly established in the case law that a change in the mode of operation of a device which renders that device inoperative for its stated utility as set forth in the cited reference renders the reference improper for use to support an obviousness-type rejection predicated on such a change. See, e.g., *Diamond International Corp. v. Walterhoefer*, 289 F.Supp. 550, 159 USPQ 452, 460-61

(D.Md. 1968); *Ex parte Weber*, 154 USPQ 491, 492 (Bd.App. 1967). In addition, any attempt to combine the teaching of one reference with that of another in such a manner as to render the invention of the first reference inoperative is not permissible. See, e.g., *Ex parte Hartmann*, 186 USPQ 366 (Bd.App. 1974); and *Ex parte Sternau*, 155 USPQ 733.

A basic mandate inherent in §103 is that a piecemeal reconstruction of prior art patents shall not be the basis for a holding of obviousness. It is impermissible within the framework of §103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. *In re Kamm*, 172 USPQ 298, 301-302 (CCPA 1972). Phrased somewhat differently, the fact that inventions of the references and of Applicants may be directed to concepts for solving the same problem does not serve as a basis for arbitrarily choosing elements from references in an attempt to fashion Applicants' claimed invention. *In re Donovan*, 184 USPQ 414, 420 (CCPA 1975).

**Harrison, U.S. Patent No. 2,626,456** (Harrison '456), discloses a palletizing skid comprised of a load of "ingots" (elongate, rectangular bars 15) bound together with two metal straps (16). The metal straps (16) wrap around the ingots (15) as well as a pair of base members also referred to as "ingots" (10). The base members (10) each have a channel (11) which is adapted to receive a metal strap (16) and are preferably comprised of the same material as the ingots (15).

**Win, U.S. Patent No. 4,907,515** (Win '515), discloses a shipping pallet comprised of a metal, wood or plastic pallet frame (10) wrapped in plastic film (15) in order to provide a support surface for a palletized load (not shown).

**Warrick, U.S. Patent No. 3,942,654** (Warrick '654), discloses a self-adhering base (18) comprised of a block of material (12) with a layer of adhesive (16) thereon, as well as a layer (16) of strippable material to temporarily cover the adhesive (16). The base (18) is adapted to be adhered directly to a palletized load which has been secured by some conventional means.

None of the references, either singly or in combination, disclose or suggest Applicants' claim 1:

1. A pallet for supporting a load of packages comprising multiple layers, said pallet comprising:
  - a) a support structure comprising flexible film wrapped around at least one of said multiple layers around a first axis and a second axis, said first axis being generally perpendicular to said second axis, whereby said flexible film covers at least a majority of said at least one of said multiple layers; and
  - b) a base adhered to said flexible film which is adapted to receive forks of a forklift.

As noted above, a reference which teaches away from the Applicants' invention may not properly be used in framing a 35 U.S.C. §103 rejection of Applicants' claims. See *United States v. Adams*, 148 USPQ 479, 484 (1966). Harrison '456 teaches away from Applicants' invention in that metal straps (16) are required in order to secure the load of ingots (15) to the base members (10). If, in an attempt to produce Applicants' claimed invention, the metal straps were taken away from Harrison's load of ingots (15), the load would fall apart.

As noted by the Examiner on page 2 of the Office Action, Harrison '456 does not disclose a support structure comprising flexible film wrapped around first and second axes, and further does not disclose a base adhered to flexible film on a support structure. The Examiner also states that Win "teaches the use of a flexible film wrapped around a support structure...." As noted above, Win '515 discloses a shipping pallet comprised of a metal, wood or plastic pallet frame (10) wrapped in plastic film (15) in order to provide a support surface for a palletized load (not shown). However, the wrapped pallet frame of Win '515 is not equivalent to Applicants' claimed support structure since the Win '515 wrapped pallet frame does not comprise flexible film wrapped around at least one of the multiple layers of a load of packages (Applicants' claim 1, element (a) and the preamble to claim 1). There is absolutely no suggestion in either Harrison '456 or Win '515 to wrap a layer of the load with flexible film to produce a support structure. The combination of the teachings of Harrison '456 and Win '515 could produce, for example, a load bounded by metal straps (Harrison) supported on a wrapped pallet frame (Win), but it would not produce Applicants' claimed invention.

Like Harrison '456, Win '515 in fact teaches away from Applicants' invention and may not properly be used in framing a 35 U.S.C. §103 rejection of Applicants' claims. *United States v. Adams*, 148 USPQ 479, 484 (1966). Specifically, Win teaches the use of a metal, wood or plastic pallet frame, while Applicants' invention completely eliminates the need for a pallet or pallet frame.

Warrick '654 does nothing to make up for the deficiencies of Harrison '456 and Win '515 discussed above regarding the lack of a support structure as claimed by Applicants. As noted above, Warrick '654 discloses a self-adhering base (18)

adhered directly to a load, but it does not disclose any support structure for the load to which the base (18) may be adhered. Specifically, Warrick '654 does not disclose or suggest adhering a base to a support structure comprising flexible film wrapped around at least one of the multiple layers of a load of packages as claimed by Applicants in claim 1. The combination of Harrison '456, Win '515 and Warrick '654 could produce, for example, a load bound by metal straps (Harrison) supported on either a wrapped pallet frame (Win) or directly adhered to a base (Warrick), but it would not produce Applicants' claimed invention.

In view of the above, Applicants believe that claim 1 is clearly allowable over the cited art. Claims 2-7 are believed to be allowable as depending, either directly or indirectly, from an allowable base claim, and further in view of the novel and nonobvious combination of elements presented therein.

Applicants' claim 8 is believed to be allowable in that none of the cited references, either singly or in combination, disclose or suggest:

8. A method for producing a pallet for supporting a load of packages comprising multiple layers, said method comprising:

- a) wrapping at least one of said multiple layers with a flexible film around a first axis;
- b) wrapping said at least one of said multiple layers with a flexible film around a second axis which is generally perpendicular to said first axis;
- c) adhering a base to said flexible film.

The arguments above relative to claim 1 are herein renewed. For the same reasons, Applicants believe that claim 8 is allowable over the cited art. Claims 9-12

are believed to be allowable as depending from an allowable base claim, and further in view of the novel and nonobvious combination of elements presented therein.

Claims 9-12 have been amended above to correct the dependency thereof, but these claims have not been amended in any substantive manner.

Applicants' claim 13 is believed to be allowable in that none of the cited references, either singly or in combination, disclose or suggest:

13. A pallet for supporting a load of packages comprising multiple layers, said pallet comprising:

- a) support means for supporting said load of packages, said support means comprising flexible film wrapped around at least one of said multiple layers around a first axis and a second axis, said first axis being generally perpendicular to said second axis, whereby said flexible film covers at least a majority of said at least one of said multiple layers; and
- b) base means adhered to said support means for receiving forks of a forklift.

The arguments above relative to claim 1 are herein renewed. For the same reasons, Applicants believe that claim 13 is allowable over the cited art.

### **Conclusion**

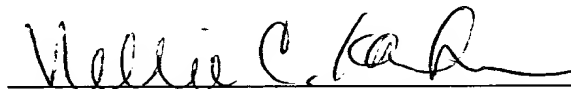
Applicants believe that all of the claims pending in the application (claims 1-13) are allowable over the cited art. Therefore, Applicants respectfully request that the Examiner reconsider the application and grant an early allowance. An Appendix in compliance with 37 C.F.R. §1.121 containing marked-up versions of the

amendments made to the claims follows this page. Should the Examiner have any questions, Applicants' attorney may be contacted at the telephone number listed below.

Respectfully submitted,

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## **APPENDIX**

Submitted herewith in compliance with 37 C.F.R. §1.121 are marked-up versions of the amendments made to the above-identified patent application. Additions are indicated by underlining, and deletions are shown in brackets.

### **In The Claims**

9. (Once amended) The method of claim [7]8 wherein said at least one of said multiple layers is the lowermost layer of said load.

10. (Once amended) The method of claim [7]8 wherein said first axis and said second axis are located on the same plane.

11. (Once amended) The method of claim [7]8 wherein the step of adhering a base to said flexible film comprises:

- a) providing at least one plastic foam piece which is not fully cured;
- b) pressing said at least one plastic foam piece onto said flexible film; and
- c) allowing said at least one plastic foam pieces to fully cure, thereby causing said at least one plastic foam piece to adhere to said flexible film.

12. (Once amended) The method of claim [7]8 wherein the step of adhering a base to said flexible film comprises:

- a) providing at least one plastic foam piece having a first surface;
- b) heating said first surface of said at least one plastic foam piece so that said first surface is tacky;



- c) pressing said first surface of said at least one plastic foam piece onto said flexible film; and
- d) allowing said first surface of said at least one plastic foam piece to cool down, thereby causing said at least one plastic foam piece to adhere to said flexible film.